IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.728 OF 2005
IN
CHAMBER SUMMONS NO.29 OF 2005
IN
MISCELLANEOUS PETITION NO.10 OF 2005

Muradkhan M. Babi Appellant

versus

The Administrator General
Maharashtra State Respondent

Ms.J.Sidhawa along with Ms.Sheela Tambe i/by Manoj Bhatt for appellant.

None for respondent.

CORAM : DR.S.RADHAKRISHNAN AND
S.C.DHARMADHIKARI, JJ.

DATE : 5th October 2005

PC :

1. Heard learned counsel for the appellant. The above matter was on board on 27th September 2005. We had directed the learned advocate for the appellant to give notice to the Administrator General, Maharashtra State indicating that the above appeal will be finally heard and disposed of at the admission stage. We have perused the advocate’s notice dated 29th September 2005 whereby the Advocate General, Maharashtra State

has duly been informed that the above appeal will be taken up on 5th October 2005 for the purposes of admission and final disposal. The learned advocate for the appellant undertakes to file an affidavit of service within two weeks from today.

2. The appeal is admitted and taken up for final hearing at the admission stage itself. By this appeal the appellant challenges the order of learned Single Judge dated 16th June 2005 in Chamber Summons No.29 of 2005 whereby the learned Judge has recorded that the learned advocate for the appellant does not press Chamber Summons No.29 of 2005 in view of the fact that the respondent herein has already filed a Probate Petition being Probate Petition (Lodging) No.441 of 2005. The learned counsel for the appellant points out that in fact the said finding is not correct and the appellant had pressed the Chamber Summons and had moved the learned Single Judge for correcting the same by way of speaking to the minutes, however, the learned Single Judge appears to have not granted the same.

3. We have perused the affidavit of the Administrator General, Maharashtra State dated 15th June 2005 in the above Chamber Summons. The

Administrator General, Maharashtra State had clearly stated on oath that he has no objection to the impleadment of the appellant in Miscellaneous Petition No.10 of 2005. We, therefore, allow Chamber Summons No.29 of 2005 in terms of prayer clause (b). Amendment to be carried out within a period of four weeks from today.

4. Under the aforesaid facts and circumstances the impugned order dated 16th June 2005 stands set aside. Appeal is accordingly allowed in the aforesaid terms, however, with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(S.C.DHARMADHIKARI, J.)